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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) and TERRY FABRICANT, ) individually and on behalf of all others ) similarly situated, ) ) Plaintiff, ) ) vs. ) ) FORA FINANCIAL LLC; AAA ) FUNDING SOLUTIONS LLC; and ) DOES 1 through 10, inclusive, and each ) of them, ) ) Defendant. )	Case No.  <b><u>CLASS ACTION</u></b>  <b>COMPLAINT FOR VIOLATIONS</b> <b>OF:</b>  1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)] 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]  <b><u>DEMAND FOR JURY TRIAL</u></b>
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Plaintiffs ABANTE ROOTER AND PLUMBING and TERRY FABRICANT (“Plaintiffs”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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**NATURE OF THE CASE**

1  
2 1. Plaintiffs bring this action individually and on behalf of all others  
3 similarly situated seeking damages and any other available legal or equitable  
4 remedies resulting from the illegal actions of FORA FINANCIAL LLC and AAA  
5 FUNDING SOLUTIONS LLC (“Defendants”), in negligently, knowingly, and/or  
6 willfully contacting Plaintiffs on Plaintiffs’ cellular telephone in violation of the  
7 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related  
8 regulations, thereby invading Plaintiffs’ privacy and causing them to incur  
9 unnecessary and unwanted expenses.

**JURISDICTION & VENUE**

10  
11 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs,  
12 residents of California, seek relief on behalf of a Class, which will result in at least  
13 one class member belonging to a different state than that of Defendants, both New  
14 York limited liability companies. Plaintiff also seeks up to \$1,500.00 in damages  
15 for each call in violation of the TCPA, which, when aggregated among a proposed  
16 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court  
17 jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under  
18 the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
19 jurisdiction.

20 3. Venue is proper in the United States District Court for the Northern  
21 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants do  
22 business within the State of California and at least one of the named Plaintiffs  
23 resides within the county of Alameda.

**PARTIES**

24  
25 4. Plaintiff ABANTE ROOTER AND PLUMBING (“Plaintiff  
26 ABANTE”), is a corporation of the State of California, whose principal place of  
27 business is in the county of Alameda and is a “person” as defined by 47 U.S.C. §  
28 153 (39).

1           5. Plaintiff, TERRY FABRICANT (“Plaintiff FABRICANT”), is a  
2 natural person residing in Los Angeles, California and is a “person” as defined by  
3 *47 U.S.C. § 153 (39)*.

4           6. Defendant, FORA FINANCIAL LLC (“Defendant STUDENT  
5 AID”), is a small business loan company, and is a “person” as defined by *47 U.S.C.*  
6 *§ 153 (39)*.

7           7. Defendant, FUNDING SOLUTIONS LLC (“Defendant  
8 HANDLEMYLOANDOCs”), is also a small business loan company, and is a  
9 “person” as defined by *47 U.S.C. § 153 (39)*.

10          8. Plaintiffs believe, and thereupon alleges, that Defendants FORA  
11 FINANCIAL LLC and FUNDING SOLUTIONS LLC were acting for the mutual  
12 benefit of one another and in concert at all times relevant herein, and will therefore  
13 be referred to hereinafter and collectively as “Defendants”.

14          9. The above named Defendants, and its subsidiaries and agents, are  
15 collectively referred to as “Defendants.” The true names and capacities of the  
16 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
17 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
18 names. Each of the Defendants designated herein as a DOE is legally responsible  
19 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend  
20 the Complaint to reflect the true names and capacities of the DOE Defendants when  
21 such identities become known.

22          10. Plaintiffs are informed and believe that at all relevant times, each and  
23 every Defendant was acting as an agent and/or employee of each of the other  
24 Defendants and was acting within the course and scope of said agency and/or  
25 employment with the full knowledge and consent of each of the other Defendants.  
26 Plaintiffs are informed and believe that each of the acts and/or omissions  
27 complained of herein was made known to, and ratified by, each of the other  
28 Defendants.

**FACTUAL ALLEGATIONS**

11. Beginning in or around May of 2017, Defendants contacted Plaintiffs on Plaintiffs' cellular telephone numbers ending in -7210, -1080, and -8210 in an attempt to solicit Plaintiffs to purchase Defendants' services.

12. Defendants used an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiffs seeking to solicit its services.

13. Defendants contacted or attempted to contact Plaintiffs from telephone numbers confirmed to belong to Defendants, including without limitation (415) 326-8929, (516) 962-6568, and (929)384-1009.

14. Defendants' calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

15. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiffs incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

16. During all relevant times, Defendants did not possess Plaintiffs' "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on their cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

17. Defendants placed multiple calls soliciting its business to Plaintiffs on their cellular telephone ending in -7210, -1080, and -8210 beginning in or around May 12, 2017 and continuing through November of 2017.

18. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

19. Plaintiffs received numerous solicitation calls from Defendants within a 12-month period.

20. Upon information and belief, and based on Plaintiffs' experiences of being called by Defendants despite having no prior relation to Plaintiffs whatsoever, and at all relevant times, Defendants failed to establish and implement

1 reasonable practices and procedures to effectively prevent telephone solicitations  
2 in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

3 **CLASS ALLEGATIONS**

4 21. Plaintiffs bring this action individually and on behalf of all others  
5 similarly situated, as a member of the proposed class (hereinafter, “The Class”),  
6 defined as follows:

7  
8 All persons within the United States who received any  
9 solicitation/telemarketing telephone calls from  
10 Defendant to said person’s cellular telephone made  
11 through the use of any automatic telephone dialing  
12 system or an artificial or prerecorded voice and such  
13 person had not previously consented to receiving such  
14 calls within the four years prior to the filing of this  
15 Complaint

16 22. Plaintiffs represent, and are members of, The Class, consisting of all  
17 persons within the United States who received any solicitation/telemarketing  
18 telephone calls from Defendants to said person’s cellular telephone made through  
19 the use of any automatic telephone dialing system or an artificial or prerecorded  
20 voice and such person had not previously not provided their cellular telephone  
21 number to Defendants within the four years prior to the filing of this Complaint.

22 23. Defendants, its employees and agents are excluded from The Class.  
23 Plaintiffs do not know the number of members in The Class, but believe the Class’s  
24 members number in the thousands, if not more. Thus, this matter should be  
25 certified as a Class Action to assist in the expeditious litigation of the matter.

26 24. The Class is so numerous that the individual joinder of all of its  
27 members is impractical. While the exact number and identities of The Class  
28 members are unknown to Plaintiffs at this time and can only be ascertained through  
appropriate discovery, Plaintiffs are informed and believe and thereon allege that  
The Class includes thousands of members. Plaintiffs allege that The Class

1 members may be ascertained by the records maintained by Defendants.

2 25. Plaintiffs and members of The Class were harmed by the acts of  
3 Defendants in at least the following ways: Defendants illegally contacted Plaintiffs  
4 and The Class members via their cellular telephones thereby causing Plaintiffs and  
5 The Class members to incur certain charges or reduced telephone time for which  
6 Plaintiff and The Class members had previously paid by having to retrieve or  
7 administer messages left by Defendants during those illegal calls, and invading the  
8 privacy of said Plaintiffs and The Class members.

9 26. Common questions of fact and law exist as to all members of The  
10 Class which predominate over any questions affecting only individual members of  
11 The Class. These common legal and factual questions, which do not vary between  
12 Class members, and which may be determined without reference to the individual  
13 circumstances of any Class members, include, but are not limited to, the following:

- 14 a. Whether, within the four years prior to the filing of this  
15 Complaint, Defendants made any telemarketing/solicitation  
16 call (other than a call made for emergency purposes or made  
17 with the prior express consent of the called party) to a Class  
18 member using any automatic telephone dialing system or any  
19 artificial or prerecorded voice to any telephone number  
20 assigned to a cellular telephone service;
- 21 b. Whether Plaintiffs and The Class members were damaged  
22 thereby, and the extent of damages for such violation; and
- 23 c. Whether Defendants should be enjoined from engaging in such  
24 conduct in the future.

25 27. As a person that received numerous telemarketing/solicitation calls  
26 from Defendants using an automatic telephone dialing system or an artificial or  
27 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting  
28 claims that are typical of The Class.

1        28. Plaintiffs will fairly and adequately protect the interests of the  
2 members of The Class. Plaintiffs have retained attorneys experienced in the  
3 prosecution of class actions.

4        29. A class action is superior to other available methods of fair and  
5 efficient adjudication of this controversy, since individual litigation of the claims  
6 of all Class members is impracticable. Even if every Class's member could afford  
7 individual litigation, the court system could not. It would be unduly burdensome  
8 to the courts in which individual litigation of numerous issues would proceed.  
9 Individualized litigation would also present the potential for varying, inconsistent,  
10 or contradictory judgments and would magnify the delay and expense to all parties  
11 and to the court system resulting from multiple trials of the same complex factual  
12 issues. By contrast, the conduct of this action as a class action presents fewer  
13 management difficulties, conserves the resources of the parties and of the court  
14 system, and protects the rights of each Class member.

15        30. The prosecution of separate actions by individual Class members  
16 would create a risk of adjudications with respect to them that would, as a practical  
17 matter, be dispositive of the interests of the other Class members not parties to such  
18 adjudications or that would substantially impair or impede the ability of such non-  
19 party Class members to protect their interests.

20        31. Defendants have acted or refused to act in respects generally  
21 applicable to The Class, thereby making appropriate final and injunctive relief with  
22 regard to the members of the Classes as a whole.

23                    **FIRST CAUSE OF ACTION**

24                    **Negligent Violations of the Telephone Consumer Protection Act**

25                    **47 U.S.C. §227(b).**

26                    **On Behalf of The Class**

27        32. Plaintiffs repeat and incorporate by reference into this cause of action  
28 the allegations set forth above at Paragraphs 1-31.



33. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

34. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*, Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

35. Plaintiffs and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

### **Knowing and/or Willful Violations of the Telephone Consumer Protection**

#### **Act**

#### **47 U.S.C. §227(b)**

#### **On Behalf of The Class**

36. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-31.

37. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

38. As a result of Defendants' knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiffs and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

39. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request judgment against Defendants for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendants' negligent violations of 47 U.S.C. §227(b)(1), Plaintiffs and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

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**JURY DEMAND**

40. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Respectfully Submitted this 1st Day of February, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
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Attorney for Plaintiff